



U.S. DISTRICT COURT
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U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

October 27, 2021

MEMO ENDORSED

VIA ECF

Hon. Valerie E. Caproni
United States District Judge
United States District Court
40 Foley Square
New York, New York 10007

Re: *Belem, et al. v. Renaud, et al.*, No. 21 Civ. 4093 (VEC)

Dear Judge Caproni:

This Office represents the government in this action in which the plaintiffs filed an amended complaint on October 15, 2021. *See* ECF No. 33. Pursuant to Rule 15(a)(3) of the Federal Rules of Civil Procedure, the government's response to the complaint is due fourteen days thereafter (*i.e.*, October 29, 2021) unless otherwise ordered by the Court. *See* Fed. R. Civ. P. 15(a)(3). Prior to the filing of the amended complaint, the Court (re)scheduled the initial conference for November 5, 2021, with preconference submissions due October 28, 2021. *See* ECF No. 30. I write respectfully to request, with plaintiffs' consent, that the date for the government to respond to the amended complaint be initially set as December 1, 2021.

The reason for the requested December 1 response date is that the amended complaint, in the government's view, has significantly changed the essential nature of this action. Specifically, the initial complaint, which was filed on May 6, 2021, asserted that U.S. Citizenship and Immigration Services ("USCIS") was unreasonably delaying its adjudication of the plaintiffs' Petition for Alien Relative (Form I-130) and Application to Register Permanent Residence or to Adjust Status (Form I-485). *See* ECF No. 1 at 14 ¶¶ A, B (Prayer for Relief seeking an order compelling adjudication of the I-130 and I-485 and asserting that the alleged delay in adjudication was "unlawful and unreasonable"). As previously noted, USCIS approved the Form I-130, *see* ECF No. 27, and since the government's last letter, USCIS denied the Form I-485 in a decision dated September 22, 2021. Thus, the adjudication that the May 6 complaint sought and asserted was being unlawfully and unreasonably withheld has now been completed (and upon that adjudication, the case essentially became moot, in the government's view). Plaintiffs then filed an amended complaint to assert that USCIS's September 22 denial decision is "unlawful and unreasonable" and should be "[s]et aside" under various provisions of the Administrative Procedure Act ("APA") and as an alleged violation of their due process rights. ECF No. 33 at 12 ¶¶ A, B.

Additional time is thus necessary to allow the government to investigate the allegations in the amended complaint (which, again, concern a new decision that was issued after this action was filed) and prepare its response. For example, the government needs additional time to investigate the procedural history alleged in the amended complaint, including with respect to an alleged

decision of the Administrative Appeals Office that was not attached to the amended complaint. *See* ECF No. 33 at ¶ 41.

This is the government's first request regarding the response to the amended complaint.¹ If the Court grants this request, the government respectfully requests that the Court adjourn the November 5 conference until December 10 or thereafter. The plaintiff consents to these requests.

I thank the Court for its consideration of this letter.

Respectfully submitted,

DAMIAN WILLIAMS
United States Attorney

By: s/ Michael J. Byars
MICHAEL J. BYARS
Assistant United States Attorney
Telephone: (212) 637-2793
Facsimile: (212) 637-2786
E-mail: michael.byars@usdoj.gov

cc: Counsel of record (via ECF)

¹ The government has requested and been granted extensions and adjournments with respect to the initial complaint, which were based on USCIS's progress toward adjudicating the Form I-130 and Form I-485. On June 21, 2021, the parties jointly requested an adjournment of the initial conference. *See* ECF No. 25. On July 21, 2021, the government requested a second adjournment and a first extension of its time to respond to the complaint. *See* ECF No. 27. On September 17, 2021, the government requested a third adjournment and a second extension. *See* ECF No. 29. The Court granted the requests; however, in granting the third adjournment/second extension, the Court noted that it was "unlikely to grant further extensions" "[a]bsent extraordinary circumstances." *See* ECF Nos. 26, 28, 30. The government respectfully submits that the circumstances described above warrant setting the government's response to the amended complaint initially as December 1, 2021.

Application GRANTED.

Defendant's time to answer, move, or otherwise respond to the complaint is adjourned to **Wednesday, December 1, 2021**. The initial pretrial conference, currently scheduled for Friday, November 5, 2021 at 11:00 A.M., is adjourned to **Friday, December 10, 2021 at 11:00 A.M.** Pre-conference submissions are due no later than **Thursday, December 2, 2021**. For the conference dial in information and the pre-conference submission requirements, the parties should consult the Court's order at docket entry 16.

SO ORDERED.

A handwritten signature in blue ink, appearing to read "Valerie Caproni".

Date: October 27, 2021

HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE